IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4163 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRELI JILLA VIDYA SABHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4163 of 2002

MR BA VAISHNAV for Petitioner No. 1-2

GOVERNMENT PLEADER for Respondent No. 1-2

MR AR THACKER for Respondent No. 3

MR HJ NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 24/09/2002

ORAL JUDGEMENT

1. With the consent of the parties, when the matter is heard for the purpose of confirmation of the interim relief, it is taken up for final hearing today.

2. The short facts of the case are that petitioner No.1 is a Trust and petitioner No.2 is a College imparting education. It is affiliated to Saurashtra University. The petitioners wanted to make the appointment of staff lecturer for Chemistry and for the said purpose, petitioners had applied for no objection certificate (NOC), which ultimately came to be granted by the authority on 22nd October, 1997. Thereafter the selection took place and at the selection also, the representative of the Commissioner of Higher Education remain present and ultimately on 24-2-1998 the selection was made and the appointment order was issued appointing one Mr.Jwalant Jagdishchandra Travadi, respondent No.4 herein. On 17--4-1998, the appointment of Mr.Jwalant Jagdishchandra Travadi made by the petitioners was approved by the competent authority.

3. On 16-9-1999, the Commissioner of Higher Education, respondent No.2 herein addressed the correspondences to the petitioner college, intimating inter alia that while "no objection certificate" was obtained the proper details were not submitted and, therefore, why the grant should not be deducted. It is the case of the petitioners that thereafter correspondences were entered into by the college with the Commissioner of Higher Education, but ultimately nothing came out therefrom.

4. Respondent No.4, who was the lecturer appointed by the college, in the meantime, was facing difficulty because the pay-bills of respondent No.4 were not sanctioned by the government authority on account of the correspondences between the college and the Commissioner of Higher Education and, therefore, he had to prefer application No.8/2001, before the Affiliated Colleges Services Tribunal at Ahmedabad for appropriate direction, inter alia, to declare that the action of the opponents in not paying to the applicant his regular salaries as prescribed by the Government from time to time and all other benefits from the date of his appointment etc., as illegal, discriminatory and unjust. In the proceedings of the aforesaid Tribunal, the Commissioner of Higher Education was impleaded as party being opponent No.3 therein. The said Tribunal ultimately after hearing all the parties, including the Commissioner of Higher Education, did not accept the contention of the Commissioner of Higher Education that the workload was

not sufficient and the Tribunal passed the order, directing disbursement of the salary as per the pay bills submitted by the College for the applicant therein. There is no dispute on the point that the order of the Tribunal dated 2-8-2001 is not challenged by the Commissioner of Higher Education or by the State Government before any higher forum. On the contrary, the correspondence and letter dated 7-2-2002, which is impugned in this petition shows that after consultation with the legal department, it has been decided to accept the order of the Tribunal. However, after accepting the order of the Tribunal in the latter portion of the letter dated 7-2-2002, it has been mentioned that the same is on account of default on the part of the college authorities and, therefore, the amount of salary payable to Mr.Travadi shall be deducted from the grant admissible to the petitioner college and it is under these circumstances, the petitioners approached before this Court.

5. The contention raised on behalf of the petitioners by Mr.Vaishnav is that when the Tribunal negatived the defence of the Commissioner of Higher Education and of the State Government, it is not open to the State Government to deduct the grant for the salary of respondent No.4 and the college authorities could not be punished for such purpose. He also submitted that indirectly it is an attempt to overreach the judicial process because it is an admitted position that the State Government has not challenged the order and rather has accepted the order and, therefore, he submitted that the impugned order dated 7-2-2002 so far it relates to deducting the grant qua the salary of respondent No.4 is arbitrary and deserves to be quashed and set aside.

6. On behalf of respondent No.2, learned AGP Ms.Manisha Lavkumar has relied upon the averments made in para 3 of the affidavit-in-repply and has contended that when the NOC was issued, counting of the actual work was required to be undertaken and the same was not done and, therefore, it is a default on the part of the college authorities. She submitted that since the proper quantum of work-load was not made by the college authorities, the government is justified in deducting the grant from the petitioners. However, when the query was put to the learned AGP, she has stated that the order of the Tribunal is not challenged by the government or the Commissioner of Higher Education before this Court or any other higher forum and the order of the Tribunal is in operation.

7. In view of the above, it appears that the order passed by the Tribunal is binding to the Commissioner of Higher Education of the State Government, who was party to the proceedings before the Tribunal and once the contention was negatived by the Tribunal, it is hardly proper on the part of the government authorities to decide on the one hand to accept the order of the Tribunal and simultaneously to take decision for deducting the very amount from the grant admissible to the petitioner college. It appears that accepting the order and passing on the burden to the other side, that too, in contravention to the order of the Tribunal can hardly be said to be an appropriate exercise of power. It also appears that the State Government took a decision of accepting the order of the Tribunal and with a view to see that the burden is passed over to the college authorities, the decision is taken to deduct the grant, though the very contention was in term negatived by the Tribunal. It, prima facie, can also be said to be attempt to over-each the judicial process. However, I find it proper to leave it at that stage without expressing any further opinion on the said aspect. But one thing is clear that the order so far as the deduction of grant is concerned, in no manner, can be said to be a reasonable action on the part of the State Government and the same, on the face, can be said to be violative of Article 14 of the Constitution of India.

8. In view of the aforesaid discussion, I am of the view that it is not necessary for this Court to examine other aspects of the case, since the order is running counter to the order passed by the Tribunal and more particularly, when the Government has decided not to challenge, but rather to accept the order. Hence, the order passed by the State Government on 7-2-2002 cannot be allowed to stand in the eye of law. In the result, order dated 7-2-2002 passed by the State Government Annexure "A", so far it relates to deduction of the amount of salary of Shri Travadi from the grant admissible to the petitioners is quashed and set aside. The petition is allowed to the aforesaid extent with the cost of Rs.2,500/- to be paid to the college authority. Rule is made absolute accordingly.

24-9-2002 (Jayant Patel, J.)

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